

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JAMES M. BIXLER, DISTRICT JUDGE,
Respondents,
and
EDMOND PAUL PRICE,
Real Party in Interest.

No. 62464

FILED

JAN 25 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER GRANTING PETITION

This petition for a writ of mandamus or prohibition challenges a district court order compelling the State to disclose the substance of an oral proffer agreement of a State witness, including disclosing an unrecorded oral proffer of the witness' expected testimony. On January 18, 2013, this court directed the real party in interest, Edmond Paul Price, to file an answer to the petition and we granted the State's motion for a stay of the district court's order.

Price is awaiting trial on multiple charges stemming from the beating and robbery of the victim of money and guns in a motel room in Primm. Victoria Edelman was present in the motel room and participated in the crimes. On July 30, 2012, the district court issued an oral ruling from the bench that the State must disclose the details of a negotiation with Edelman to testify against Price at his trial. Pursuant to that ruling, the State was required to disclose a summary of Edelman's unrecorded oral proffer made during the negotiations. Over the course of the next few months, a number of hearings and defense motions to compel discovery

related to the district court's ruling followed. In a hearing on January 3, 2013, the district court denied Price's request to depose Edelman but ruled that "in order to offer [Edelman's testimony] at trial, [the prosecution] either [has] to have her make a written statement, or have some kind of recorded oral statement." A written order followed on January 8, 2013. Although the January 3, 2013, hearing focused on Edelman's oral proffer, the subsequent order required the State to disclose the proffer agreement and provided that Edelman would be precluded from testifying at trial if the State did not comply. The order appears to contemplate disclosure of Edelman's oral proffer in addition to the other details of the proffer agreement. The State represents that in response to the January 8, 2013, order, it executed an "agreement to testify," which was provided to Price on January 11, 2013, along with a copy of Edelman's federal plea agreement. While Price argues that the "agreement to testify" is insufficient to satisfy the district court's order, our concern is not with the overall sufficiency of that agreement as the State's writ petition focuses on the district court's order compelling it to disclose Edelman's unrecorded oral proffer.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, NRS 34.160, or to control a manifest abuse or arbitrary or capricious exercise of discretion, see Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981); see State v. Dist. Ct. (Armstrong), 127 Nev. ___, ___, 267 P.3d 777, 780 (2011) (defining manifest abuse of discretion and arbitrary or capricious exercise of discretion in context of mandamus). The writ will not issue, however, if a petitioner has a plain, speedy, and adequate remedy in the ordinary course of the law. NRS 34.170. Ultimately, the decision to entertain an

extraordinary writ petition lies within our discretion, and we must “consider[] whether judicial economy and sound judicial administration militate for or against issuing the writ.” Redeker v. Dist. Ct., 122 Nev. 164, 167, 127 P.3d 520, 522 (2006), limited on other grounds by Hildalgo v. Dist. Ct., 124 Nev. 330, 341, 184 P.3d 369, 377 (2008).

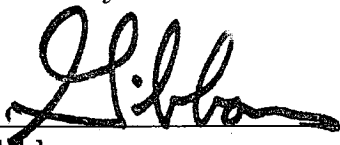
Considering the writ petition, the answer, and the record before us, we conclude that our intervention is warranted and that extraordinary relief is justified in this instance, as there is no controlling legal authority that supports the district court’s decision compelling the State to disclose Edelman’s unrecorded oral proffer. NRS 174.235(1)(a) obligates the State to allow the defense to inspect or copy written or recorded statements made by a witness it intends to call during its case in chief. Neither that statute nor any other discovery statute or rule requires disclosure of unrecorded oral statements and to the extent that the district court’s order requires the State to reduce Edelman’s oral proffer to a writing or recording, nothing in the discovery statutes supports such a requirement.¹ Further, we are not convinced that the authority on which Price and the district court rely supports the district court’s ruling.² While

¹The district court has been inconsistent about whether the summary of Edelman’s oral proffer must be written or recorded or may be provided orally. In a July 30, 2012, hearing, the district court indicated that the State was required to provide “at least an oral summation” of Edelman’s expected testimony. However, in a January 3, 2013, hearing, the district court indicated that the summary should be in writing or recorded but later in the hearing indicated that the summary need not be recorded or in the form of an affidavit.

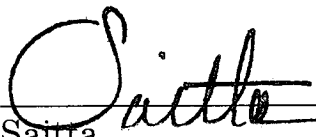
²The federal district court cases referenced by Price and the district court appear to address written or recorded proffers and notes or other
continued on next page . . .

we appreciate the district court's concerns about Price facing trial without knowing the precise substance of Edelman's oral proffer, the State cannot be compelled to disclose information that it has no duty to disclose. Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate its order compelling the State to disclose an oral proffer of the expected testimony of Victoria Edelman.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. James M. Bixler, District Judge
Attorney General/Carson City
Clark County District Attorney
Coyer & Landis, LLC
Eighth District Court Clerk

... continued

writings prepared contemporaneously with an oral proffer. See United States v. Sudikoff, 36 F. Supp. 2d. 1196 (C.D. Cal. 1999).